

Message Text

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ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 ACDA-07 AGR-05 AID-05 CEA-01

CEQ-01 CG-00 CIAE-00 CIEP-01 COME-00 DODE-00 DOTE-00

EB-07 EPA-01 ERDA-05 FEAE-00 FMC-01 TRSE-00 H-02

INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01

OES-06 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06

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C O N F I D E N T I A L USUN 3349

FROM LOS DEL

E.O. 11652: GDS

TAGS: PLOR

SUBJECT: LOS: INFORMAL PLENARY ON DISPUTE SETTLEMENT AUGUST 18

1. INFORMAL PLENARY AUGUST 18 COMPLETED ARTICLE 12 (PRO-VISIONAL MEASURES) AFTER STATEMENTS FROM TOTAL OF OVER FORTY SPEAKERS. PLENARY BEGAN MEETING TWICE A DAY AND DECIDED TO TAKE UP ART. 14 AFTER CONSIDERATION OF ART. 18.

2. USSR TOOK STRONG POSITION IN FAVOR OF DELETING PARA. 2, ARGUING IT IS IMPROPER BECAUSE IT ALLOWS A FORUM TO ACT IN A CASE IT HAS NO CONTINUING RESPONSIBILITY FOR, THAT IT SPLITS JURISDICTION, THAT IT CAN BE READ TO AUTHORIZE LOS TRIBUNAL TO INTERVENE IN SECTION I, PART IV SETTLEMENT PROCEDURES, OR TO INTERVENE IN SETTLEMENT PROCEDURES UNDER REGIONAL ARRANGEMENTS. BAHRAIN, BRAZIL, ECUADOR, CHILE, BULGARIA AND UKRAINE SUPPORTED DELETION OF PARA. 2.

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3. US POINTED OUT THAT PARA. 2 IS DESIGNED TO MAKE AVAILABLE

PROVISIONAL MEASURES BY A STANDING BODY (LOS TRIBUNAL) WHILE ARBITRATION OR SPECIAL COMMISSIONS ARE BEING CONSTITUTED. THIS COULD INVOLVE UP TO 6 MONTHS, DURING WHICH A LOT OF POLLUTION CAN HAPPEN. US COULD LEAVE IT OPEN FOR A PARTY TO GO TO ICJ OR LOS TRIBUNAL AND COULD GO ALONG WITH DELETION OF REFERENCE TO A FORUM THAT DOES NOT HAVE THE POWER TO PRESCRIBE PROVISIONAL MEASURES. EL SALVADOR TOOK A VERY SIMILAR APPROACH, POINTING OUT IN ADDITION THAT DELETION OF PARA. 2 WOULD CREATE AN IMBALANCE BETWEEN DISPUTE SETTLEMENT SYSTEM APPLICABLE FOR THOSE WHO CHOOSE ICJ OR LOS TRIBUNAL, ON THE ONE HAND, AND ARBITRATION OR SPECIAL PROCEDURES ON THE OTHER.

4. CAMEROON SUGGESTED NEW PARA. 2 IN LIGHT OF US AND EL SALVADOR COMMENTS. KENYA, FIJI AND IRAQ SUPPORTED CAMEROON SUGGESTION WHILE AUSTRALIA, TUNISIA, IRELAND, FRG, IRAN, CENTRAL AFRICAN REPUBLIC, DENMARK, CANADA, NIGERIA, PERU AND UK OTHERWISE SUPPORTED RETENTION OF PARA. 2 WITH NECESSARY CHANGES IN DRAFTING. UK SUPPORTED FRENCH POSITION ON USING ICJ IN PLACE OF LOS TRIBUNAL IN PARA. 2 AND NIGERIA, DENMARK, FRG, IRELAND, AND AUSTRALIA PREFERRED ICJ OR CHOICE BETWEEN ICJ AND LOS TRIBUNAL.

5. MOST SPEAKERS SUPPORTED PARA. 1 WITH DELETION OF REQUIREMENT THAT A PARTY REQUEST PROVISIONAL MEASURES SO THAT FORUM CAN ACT AT ITS OWN INITIATIVE, THOUGH SEVERAL DID NOT AGREE. SEVERAL SPEAKERS ALSO MADE TECHNICAL COMMENTS REGARDING THE DISTINCTION BETWEEN INDICATING AND PRESCRIBING PROVISIONAL MEASURES, AND RELATION OF ART. 12 TO ICJ STATUTE ART. 41. OTHERS THOUGHT REFERENCE IN PARA. 1 TO ENVIRONMENT SHOULD BE QUALIFIED TO SERIOUS OR IRREPARABLE HARM AND A FEW SOUGHT ITS DELETION.

6. KENYA AND INDIA NOTED THAT THEY REGARDED REFERENCE TO QTE MARINE ENVIRONMENT UNQTE IN PARA. 1 TO REFER ONLY TO THE MARINE ENVIRONMENT OUTSIDE THE LIMITS OF NATIONAL JURISDICTION. ALGERIA SAID REFERENCE TO ENVIRONMENT SHOULD BE COUPLED WITH OBJECTIVE OF MAINTAINING THE COMMON HERITAGE OF MANKIND.

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7. DISCUSSION OF ART. 13 (ACCESS TO PROCEDURES) BEGAN WITH SPAIN, SO. KOREA AND ECUADOR SUGGESTING ITS DELETION BECAUSE ISSUE IS BETTER DEALT WITH IN THE RESPECTIVE STATUTES OF ANNEXES OF THE VARIOUS PROCEDURES, POINTING FOR EXAMPLE TO CONTRADICTION BETWEEN ART. 20 OF ANNEX 1C AND ART. 13.

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